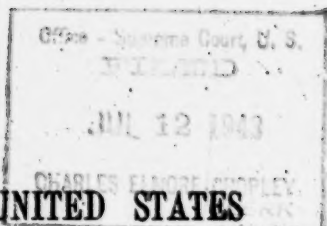


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 154

**ANDERSON NATIONAL BANK, SUING ON BEHALF OF
ITSELF AND ALL OTHERS SIMILARLY SITUATED,**
Appellants,

vs.

**H. CLYDE REEVES, INDIVIDUALLY AND AS COMMISSIONER
OF REVENUE OF THE STATE OF KENTUCKY, ETC., ET AL.**

**APPEAL FROM THE COURT OF APPEALS OF THE STATE OF
KENTUCKY.**

STATEMENT AS TO JURISDICTION.

✓ **CHARLES W. MILNER,**
✓ **LEO T. WOLFORD,**
Counsel for Appellant.

BULLITT & MIDDLETON,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 154

ANDERSON NATIONAL BANK, SUING ON BEHALF OF
ITSELF AND ALL OTHERS SIMILARLY SITUATED,

versus *Appellants,*

H. CLYDES REEVES, INDIVIDUALLY AND AS COMMISSIONER
OF REVENUE OF THE STATE OF KENTUCKY AND A MEMBER
OF THE KENTUCKY TAX COMMISSION; C. M. C. PORTER
AND R. L. MCFARLAND, INDIVIDUALLY AND AS ASSOCIATE
COMMISSIONERS OF REVENUE OF THE STATE OF KENTUCKY
AND AS MEMBERS OF THE KENTUCKY TAX COMMISSION;
HUBERT MEREDITH, INDIVIDUALLY AND AS ATTORNEY
GENERAL OF THE STATE OF KENTUCKY;

Appellees.

**SEPARATE STATEMENT AS TO JURISDICTION RE-
QUIRED BY PARAGRAPH 1 OF RULE 12 OF THE
REVISED RULES OF THE SUPREME COURT OF
THE UNITED STATES.**

Anderson National Bank, Suing on Behalf Of Itself And
All Others Similarly Situated (hereinafter called the
Banks) in connection with its appeal to the Supreme Court
of the United States from the final judgment and decision

of the Court of Appeals of Kentucky in the above entitled cause rendered on June 15, 1943, submits this, its separate statement as to jurisdiction required by Paragraph 1 of Rule 12 of the Revised Rules of the Supreme Court of the United States.

This is a suit by Anderson National Bank, suing on behalf of itself and all other banks, both National and State, and all others who hold property which the Kentucky Escheat Act of 1940, as amended in 1942, declares presumed abandoned and which requires the banks and others to report such presumed abandoned property to the Department of Revenue of the State of Kentucky and, under heavy penalty, to voluntarily and without notice to the owners, suit or judicial decree turn over to the Department of Revenue all such presumed abandoned property.

The Court of Appeals of Kentucky in its first opinion and decision in this case dated December 18, 1942, 293 Ky. 735, 170 S. W. (2) 350, affirmed the judgment of the Franklin Circuit Court in so far as such court had held that the Kentucky Statutes did not violate the National Banking Act as to National Banks, and reversed the Circuit Court in so far as such court had permanently enjoined the defendants from enforcing those provisions of the Act which required the voluntary turning over to the State of property which the statutes declared presumed abandoned on the ground that those parts of the Act were violative of the due process clause of the 14th Amendment to the Constitution of the United States. The case was thereupon remanded to the Franklin Circuit Court, and such court on June 4, 1943, entered a Final Judgment in conformity with the opinion and decision of the Court of Appeals of Kentucky.

On appeal from such judgment, the Court of Appeals of Kentucky held in its decision of June 15, 1943 (not officially reported) against the contention of the banks that such

Kentucky Statutes as construed by it (a) requiring all national and State Banks to report and to voluntarily turn over to the Department of Revenue all demand and time deposits which have been inactive or dormant for eight and twenty-five years respectively, and (b) requiring that all persons holding personal property for the benefit of another which has been unclaimed for ten years to report and to voluntarily turn over to the Department of Revenue such personal property, are not in conflict with the National Banking Act as to National Banks, and do not violate the due process clause of the 14th Amendment of the Constitution of the United States as to all banks and all other persons required to report and surrender property to the Department of Revenue; and the decision and judgment of the Court of Appeals of Kentucky sustained the validity and constitutionality of the Kentucky Escheat Act of 1940 as amended in 1942 and such court rendered its decision in favor of the legality and validity of such statutes of the State of Kentucky as so construed by it:

(a) The Statutory Provisions Believed to Sustain the Jurisdiction.

The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Section 237a of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. A., Section 344(a).

(b) The Statutes of the State, the Validity of Which Is Involved.

When this suit was filed in the Franklin Circuit Court, and when the May 8, 1942, Final Judgment of that court was entered, Carroll's Kentucky Statutes, Baldwin's 1936 Revision, and the supplements thereto, were the official edition of the Kentucky Statutes, therefore the pleadings

and the May 8, 1942, judgment of the Franklin Circuit Court referred to such statutes. While the case was on appeal to the Kentucky Court of Appeals for the first time, the Kentucky Revised Statutes became the official Statutes of Kentucky, therefore, the first opinion of the Court of Appeals of Kentucky, dated December 18, 1942, and all subsequent judgments, orders and opinions make references to the Kentucky Revised Statutes. The Kentucky Revised Statutes are a re-write and a re-grouping of the former Carroll's Statutes.

There is summarized below the Kentucky Revised Statutes, Page 2596 *et seq.*, the validity of which is involved. The numbers in parentheses are the comparable sections in the Carroll's Kentucky Statutes; February, 1941, Supplement Page 116, *et seq.*:

"393.010 (1605a; 1610) CONSTRUCTION OF CHAPTER, (1) As used in this chapter, unless the context requires otherwise:

• • • • •
 "(d) 'Person' means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee or liquidating agent. • • • • •"

"393.060 (1610) DEPOSITS IN BANK OR TRUST COMPANY PAYABLE ON DEMAND; WHEN PRESUMED ABANDONED.

"Any deposit (legal, beneficial, equitable or otherwise) payable on demand in any bank or trust company in this state, together with the interest thereon shall be presumed abandoned unless the owner has, within ten successive years next preceding the date as of which reports are required by KRS 393.110:

(1) Negotiated in writing with the bank or trust company concerning it;

(2) Been credited with interest on the pass book or certificate of deposit on his request;

(3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or

(4) Increased or decreased the amount of the deposit,

“393.070 (1610) DEPOSITS NOT PAYABLE ON DEMAND; WHEN PRESUMED ABANDONED.”

This section has the identical provision as to demand deposits as is contained in the preceding section except that the time is twenty-five instead of ten years.

“393.080 (1610) DEPOSITS FOR SECURITY; WHEN PRESUMED ABANDONED.”

“Any deposit of money, stocks, bonds or other credits made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm, and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent.”

“393.090 (1610) INTANGIBLE PERSONAL PROPERTY HELD FOR ANOTHER; BENEFITS ON ANY INSTRUMENT; WHEN PRESUMED ABANDONED.

“All dividends, stocks, bonds, money, credits and claims for money and credits, and all intangible personal property, and the increments of any of them, held in this state by any person for the benefit of another shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten years from the time the holder, trustee, debtor, or other

responsible person became obligated to return them or their equivalent to the proper owner or claimant."

.

"393.110 (1611) HOLDERS OF ABANDONED PROPERTY TO REPORT TO DEPARTMENT; POSTING OF NOTICES; DUTY TO SURRENDER PROPERTY TO DEPARTMENT; RIGHTS OF ACTION.

"(1) It shall be the duty of all state and National banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of KRS 393.060 to 393.100, to report annually to the department as of July 1, all property held by them declared by this chapter to be presumed abandoned."

"(2) Any person who has made a report of any estate of property presumed abandoned, as required by this chapter, shall between November 1 and November 15 of each year, turn over to the department all property so reported; but if the person making the report or the owner of the property shall certify to the department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the department except on order of court."

"(3) The person reporting or holding the property or any claimant thereof shall always have right to a judicial determination of his rights under this chapter and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not"

.

"393.130 (1613) TRANSFEROR TO DEPARTMENT RELIEVED OF LIABILITY.

"Any person who transfers to the department property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter."

"393.140 (1614) CLAIM OF INTEREST IN PROPERTY SURRENDERED TO STATE.

"(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee or other person entitled under the laws of this state relating to wills, descent and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state."

"393.150 (1615) COMMISSIONER TO DETERMINE CLAIMS."

"393.160 (1615) APPEALS FROM DECISION OF COMMISSIONER."

"393.170 (1616) PROPERTY IN FEDERAL CUSTODY; DETERMINATION OF WHETHER ESCHEAT HAS OCCURRED."

“393.230 (1619) PROCEEDING TO FORCE PAYMENT OF INTANGIBLE PROPERTY; TO ESTABLISH ACTUAL ABANDONMENT.

“(1) If any person or the agent of any court refuses to pay or surrender intangible property to the department as provided in KRS 393.060 to 393.110, an equitable proceeding may be brought on the relation of the commissioner to force payment or surrender. All property subject to KRS 393.060 to 393.110 may be listed and included in a single action.

“(2) If any intangible property is turned over to the department on presumption of abandonment, in accordance with KRS 393.060 to 393.120, the commissioner may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned, or that the owner has died and there is no person entitled to it.”

.

“393.290 (1622-1) CIVIL ACTION TO ENFORCE PRODUCTION OF REPORTS, SURRENDER OF PROPERTY.

“(1) The department may require the production or reports, or the surrender of property as provided in this chapter by civil action, including an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten per cent of all amounts that he is ultimately required to surrender. This penalty shall not exceed five hundred dollars.

“(2) Any person who in good faith contests the applicability of this chapter to him may be relieved of the threat of any penalty by posting a compliance bond in an amount and of surety sufficient to the court.”

.

“393.990 (1622-1) PENALTIES

“Any person who refuses to make any report as required by this chapter shall be fined not less than fifty

dollars nor more than two hundred dollars, or imprisoned for not less than thirty days nor more than six months, or both."

There is appended hereto a full copy of the Kentucky Escheat Act of 1940 and the 1942 Amendment as they appeared in the Carroll's Statutes. There is also appended the entire Escheat Act as amended and now contained in the Kentucky Revised Statutes.

(c) The Date of the Judgment or Decree Sought to Be Reviewed and the Date of the Application for Appeal.

The Court of Appeals of Kentucky which is the highest court of Kentucky rendered the decision and judgment sought to be reviewed on June 15, 1943 and on June 18, 1943, the banks applied for, and were allowed this appeal.

The June 15, 1943, opinion of the Court of Appeals of Kentucky, a copy of which is appended hereto was in favor of the validity of the Kentucky Escheat Act of 1940 as amended in 1942, as construed by it and against the contention of the banks that such statutes as applied to National banks were in conflict with, and were repugnant to the National Bank Act, and as to all banks and other persons required to report and voluntarily surrender presumed abandoned property were repugnant to and in violation of the due process clause of the 14th Amendment of the Constitution of the United States.

The Federal Question Raised.

The Banks in the original Bill of Complaint in Equity filed in the Franklin Circuit Court pleaded among other things as follows:

"As to plaintiff and other National Banks for whom it sues, the Kentucky Escheat Act of 1940 (Ky. St. 1605a through 1622-1, both inclusive), is in violation of the National Banking Laws."

"The Act deprives the banks, and their depositors of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. * * *"

"The said Act is an attempt by the State of Kentucky to take the property of plaintiff and all others for whom it is suing for public use without due process of law and without just or any compensation therefor and in violation of the rights accruing to plaintiff and those for whom it sues by the Constitution of the State of Kentucky and by the Constitution of the United States, which rights are specifically set up and claimed by the plaintiff and those for whom it sues."

The Circuit Court held (a) that the Escheat Act did not violate the National Banking Act, and (b) that it was violative of the Fourteenth Amendment to the Federal Constitution in so far as it attempted to require the banks and others holding "presumed abandoned property" to voluntarily turn over to the State such "presumed abandoned property" without notice to the owner, hearing or judicial decree. The judgment of the Circuit Court denied the banks the injunction which they sought in so far as national banks were concerned and contained a permanent injunction preventing the defendants and all others from attempting to enforce this unconstitutional part of the Act.⁶

The banks appeal to the Court of Appeals of Kentucky from so much of the judgment of the Circuit Court as held that the Act did not violate the National Banking Act and the defendants filed a Cross-Appeal in the Court of Appeals from so much of the Circuit Court judgment as granted the permanent injunction on the ground that the Act was violative of the Fourteenth Amendment to the Federal Constitution.

The Court of Appeals by an opinion and order dated December 23, 1942, affirmed the Circuit Court judgment which held that the Act was not violative of the National

Banking Act and reversed the Circuit Court in so far as that court had held any part of the Act violative of the Federal Constitution and directed the Circuit Court to enter an order in conformity with the opinion and decision of the Court of Appeals of Kentucky.

In the December 23, 1942 Opinion of the Court of Appeals 293 Ky. 735, 170 S. W. (2) 350, it said:

"Appellants advance the propositions (1) that the provisions of the Act requiring delivery to the State of deposits declared to be presumed abandoned constitute, in effect, an attempted escheat of such deposits, which is invalid because of the absence of notice and judicial determination, . . . and (3) that in any event such provisions even though valid as to state banks, are invalid as to national banks. These propositions will be considered in the order named." . . .

"But the portions of the Act dealing with dormant bank deposits do not provide for a seizure of the deposits and vesting of title or ownership in the state but merely for a transfer of property . . ."

.

"It is our conclusion that the controversial portions of the Act are reasonable (as to the time provided as well as to the procedure) and that they would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the absence of the provision requiring notice to be posted at the courthouse door. Accordingly, it becomes unnecessary to discuss the sufficiency of such notice."

.

"The question of validity of the Act as applied to national banks must be approached in the light of the limitations applicable to state legislation affecting such institutions. National banks are amenable to state laws as are other institutions if such laws do not

interfere with their functions in such manner as to conflict with the general objects and purposes of the National Banking Act." * * *

* * * it is our opinion that the Act has no tendency to cause depositors to hesitate on account of apprehended fear of confiscation to make deposits in national banks. This being true, there is no unwarranted interference with such banks and no frustration of the purposes of national legislation concerning them such as to render the Act invalid as to them."

On the return of the case to the Franklin Circuit Court that court in conformity with the opinion and decision of the Court of Appeals of Kentucky entered an order holding in part as follows:

"That the Kentucky Escheat Act of 1940, being KRS 393.010 through 393.990 (formerly Carroll's Kentucky Statutes 1605-a through 1622-1, as amended by Chapter 156 of the Acts of the General Assembly of 1942), as applied to the plaintiff, Anderson National Bank, suing on behalf of itself and all others similarly situated, is valid and is not in conflict with the National Banking Act, or with the Due Process Clause of the State Constitution, or of the Fourteenth Amendment of the Constitution of the United States.

That the plaintiffs' petition herein be, and it is, dismissed."

The Circuit Court thereby denied to the banks the injunctive relief which they had asked for.

The banks thereupon appealed such final judgment of the Franklin Circuit Court to the Court of Appeals of Kentucky and that court affirmed, by an order and opinion dated on June 15, 1943, the judgment of the Franklin Circuit Court.

In its second opinion delivered June 15, 1943 (not yet officially reported) the Court of Appeals of Kentucky said:

"This is the second appeal of this case. The opinion on the first appeal reported in 293 Ky. 735, 170 S. W. (2) 350, upheld the validity of the principal sections of Chapter 79 of the Acts of 1940 as amended by Chapter 156 of the Acts of 1942, KRS 393.010, and affirmed the judgment of the lower court on the appeal but reversed it on the cross-appeal. On the return of the case to the lower court judgment was entered in conformity with the opinion. This appeal is from that judgment. We are bound by the Opinion on the first appeal whether it be right or wrong under our familiar law of the case rule. We have considered the contentions (1) that the act in question conflicts with the National Banking Act (2) that it is violative of the due process clause of the Fourteenth Amendment to the Federal Constitution and find the contentions without merit. Since the judgment is in conformity with the former opinion it is affirmed."

The questions involved are substantial. In *First National Bank of San Jose v. California*, 262 U. S. 366, there was involved a California Statute which attempted to escheat deposits that had been inactive or dormant for twenty years. The California Statute provided for abundant notice, suit and a judicial decree before the deposits could be taken. The Supreme Court held that such Statutes as applied to National Banks were violative of the National Banking Act in an opinion which is in part as follows:

"Section 5136, U. S. Revised Statutes, confers upon national banks power to receive deposits, which necessarily implies the right to accept loans of money, promising to repay upon demand the lender or his order. These banks are instrumentalities of the Federal Government. . . ."

“Does the statute conflict with the letter or general object and purposes of the legislation by Congress? Obviously, it attempts to qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receive deposits under their plainly granted powers. If California may thus interfere other States may do likewise; and, instead of twenty years, varying limitations may be prescribed—three years perhaps, or five, or ten, or fifteen. We cannot conclude that Congress intended to permit such results. They seem incompatible with the purpose to establish a system of governmental agencies specifically empowered and expected freely to accept deposits from customers irrespective of domicile with the commonly consequent duties and liabilities. . . .”

“This Court has often pointed out the necessity for protecting federal agencies against interference by state legislation. . . .”

Since the above decision by the Supreme Court, each case on the subject has followed it with the exception of the present decision and opinion of the Court of Appeals of Kentucky.

As to State banks and others, the Kentucky statutes involves are the only ones of which we are aware that provide for a taking of inactive or dormant deposits from banks and for the taking of other unused property without notice to the owner, suit and judicial decree. If the decision of the Court of Appeals of Kentucky is permitted to stand, then other States may, as suggested by this Court, take from National Banks deposits that have been inactive for only three years and the States will have found a way to regulate National Bank deposits. Also, if the decision of the Court of Appeals of Kentucky is permitted to stand, then a way has been found by which States can raise revenue by just taking dormant deposits and other vacant

and unused property without notice to the owner, hearing or judicial decree.

The banks file herewith:

(1) A copy of the Opinion of the Court of Appeals of Kentucky dated June 15, 1943, marked Exhibit "A".

(2) A copy of the Opinion of the Court of Appeals of Kentucky dated December 23, 1942, marked Exhibit "B".

(3) A copy of Kentucky Escheat Act of 1940, marked Exhibit "C".

(4) A copy of the 1942 Amendment, marked Exhibit "D", and

(5) A copy of said Statutes as now contained in the Kentucky Revised Statutes, marked Exhibit "E".

The banks file herewith an Assignment of Errors as to such final decision of the Court of Appeals of Kentucky.

CHARLES W. MILNER,
LEO T. WOLFORD,
*Counsel for Appellants and
Petitioners herein.*

BULLITT & MIDDLETON,
Of Counsel.

EXHIBIT "A".**COURT OF APPEALS OF KENTUCKY**

June 15, 1943

ANDERSON NATIONAL BANK, ETC., *Appellant*,***vs.*****H. CLYDE REEVES, INDIVIDUALLY, ETC., *Appellee*.**

Appeal from Franklin Circuit Court

Hon. W. B. Ardery, Judge

Opinion by Chief Justice Fulton—Affirming.

This is the second appeal of this case. The opinion on the first appeal, reported in 293 Ky. 735, 170 S.W. (2d) 350, upheld the validity of the principal sections of Chapter 79 of the Acts of 1940 as amended by Chapter 156 of the Acts of 1942 (KRS 393.010 et seq.) and affirmed the judgment of the lower court on the appeal but reversed it on the cross-appeal.

On the return of the case to the lower court judgment was entered in conformity with this opinion. This appeal is from that judgment.

We are bound by the opinion on the first appeal, whether it be right or wrong, under our familiar law of the case rule. We have considered the contentions 1) that the Act in question conflicts with the National Banking Act and 2) that it is violative of the due process clause of the 14th Amendment to the Federal Constitution and find the contentions without merit.

Since the judgment is in conformity with the former opinion it is affirmed.

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EARL S. WILSON, *Asst. Atty. Gen.*, Frankfort, Kentucky.

A. E. FUNK, *Asst. Atty. Gen.*, Frankfort, Kentucky.

EXHIBIT "B".

COURT OF APPEALS OF KENTUCKY

December 18, 1942

ANDERSON NATIONAL BANK, ET AL., *Appellant*,

vs.

H. CLYDE REEVES, individually and as Commissioner of Revenue, *Appellee*.

Appeal from Franklin Circuit Court
Hon. Wm. B. Ardery, Judge

Opinion by Judge Fulton—Affirming on the Original Appeal and Reversing on the Cross-Appeal.

This appeal brings in question the correctness of a judgment holding valid certain parts of Chap. 79 of the Acts of 1940 (K.R.S. 393.010 et seq.) as amended by Chap. 156 of the Acts of 1942, dealing with escheats and with the disposition of certain classes of property declared to be presumed abandoned. By the cross appeal it is sought to reverse the judgment in so far as it adjudged certain portions of the same Acts invalid.

By sections 3 to 6 of the Act inclusive (K.R.S. sections 393.020, 393.030, 393.040 and 393.050) certain classes of property are made subject to escheat and it is made the duty of the Commissioner of Revenue to institute proceedings to vest title to such property in the Commonwealth, the procedure to be in accordance with the Civil Code. Where title to such property is vested in the Commonwealth pursuant to such proceedings, any person claiming an interest therein, and who was not actually served with notice and did not appear in the proceedings, may within five years

after the judgment file his claim with the Department of Revenue. Appropriate procedure is provided for the prosecution of such claims and right of appeal is given to the Franklin Circuit Court and to this court. These portions of the Act are not in controversy although it is suggested by appellants that the entire Act should be declared invalid. They are mentioned, however, for the purpose of giving a general idea as to the scope of the Act.

So far as material to this controversy section 7 of the Act (K.R.S. 393.060 and 393.070 provides in substance:

(1) That where the owner of bank deposits payable on demand has not for ten successive years next preceding the date for making reports as required by the Act (a) negotiated in writing with the bank or trust company concerning it, or (b) been credited with interest on the pass book or certificate of deposit on his request, or (c) had a transfer, distribution of interest, or other transaction noted of record in the books or records of the bank or trust company, or (d) increased or decreased the amount of deposit, such deposits shall be presumed abandoned.

(2) The same presumption of abandonment arises with respect to deposits not payable on demand except that the period of time is twenty-five years instead of ten.

Section 8 (K.R.S. 393.110) provides in substance that all persons holding property declared to be presumed abandoned must report same to the Department of Revenue annually as of July 1, the report being due on or before September 1 of each year. A copy of the report is required to be posted on the courthouse door or bulletin board on or before October 1 and it is provided that such publication "shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law". The person reporting the property is required to turn it over to the Department of Revenue between November 1 and November 15 except that "if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandon-

ment no longer exists or never did exist or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then the person reporting or holding the property shall not be required to turn the property over to the Department except in order of court The person reporting or holding the property or any claimant thereof shall always have the right to judicial determination of his rights under this Act and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not"

Section 17 (K.R.S. 393.250) provides that all monies received by the Department of Revenue under the provisions of the Act must be deposited with the State Treasurer and credited to the account of the General Expenditure Fund.

Section 11 (K.R.S. 393.140) provides that any person claiming an interest in any property turned over to the state on the ground that it was presumed abandoned (provided it was not subsequently adjudged to have been actually abandoned) may claim it "at any time after same was paid to this Commonwealth"; and, even where actual abandonment was adjudged subsequent to payment to the state, any person claiming an interest, who was not actually served with notice and who did not appear, and whose claim was not considered during the proceedings, may within five years after the judgment file his claim with the Department.

Section 12 (K.R.S. 303.140) provides that if a claimant establishes his right to property presumed abandoned the Commissioner of Revenue must authorize payment to him of a sum "equal to the same amount which was paid in to the State Treasury in compliance with this Act".

The claimant is required to publish notice of his claim, within fifteen days after filing it, in a newspaper in the county in which the property was held before being transferred to the Commonwealth.

Section 10 (K.R.S. 393.130) provides: "Any person who transfers to the department property to which the state is

entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter."

Section 16 (K.R.S. 393.230) provides that if any one refuses to pay or surrender property presumed abandoned to the Department as required by the Act, an equitable proceeding may be brought on relation of the Commissioner to force payment or surrender. It is further provided that if property is turned over to the Department on presumption of abandonment the Commissioner may at any subsequent time institute proceedings to establish conclusively that it was *actually* abandoned, or that the owner has died and there is no person entitled to it. It is also provided in this section that all actions mentioned under the Act shall be filed as equity actions and follow the procedure provided by the Civil Code of Practice, unless otherwise provided.

This action was filed under the Declaratory Judgment Act by the Anderson National Bank, suing on behalf of itself and all others similarly situated and on behalf of depositors in banks, to test the validity of the Act and an injunction was sought to prevent the appellees from enforcing it—the appellees do not question the right of appellants to challenge the validity of the Act in the representative status assumed.

The trial court adjudged that the part of the Act requiring a voluntary delivery of the property to the state was unconstitutional because of the absence of provision for adequate notice to the owners of the property. Accordingly, the appellees were enjoined from insisting on or accepting a delivery of property presumed abandoned without first filing a suit and procuring a judgment for delivery thereof. It was adjudged that the Act was valid in so far as it required reports of property presumed abandoned and in so far as it authorized the filing of actions to compel the surrender of property declared to be presumed abandoned. Accordingly, the trial court declined to enjoin appellees from requiring reports of property presumed

abandoned and also declined to enjoin appellees from filing suits to recover property presumed abandoned, whether reported or not.

Appellants question the correctness of the judgment in holding the indicated portions of the Act valid and the appellees, by cross appeal, seek a reversal of the judgment in so far as it holds any part of the Act unconstitutional or enjoins enforcement thereof.

Appellants advance the propositions 1) that the provisions of the Act requiring delivery to the State of deposits declared to be presumed abandoned constitute, in effect, an attempted escheat of such deposits, which is invalid because of the absence of notice and judicial determination, 2) that even if valid as to deposits made subsequent to the Act such provisions are ineffective as to prior deposits because, when so applied, such provisions impair the obligation of the contract of deposit, and 3) that in any event such provisions, even though valid as to state banks, are invalid as to national banks. These propositions will be considered in the order named.

Appellants' brief contains an elaborate and scholarly treatise on the origin, history and purposes of prior escheat laws of this state as a basis for their argument that the Act is unconstitutional in so far as it requires a delivery to the state of deposits declared to be presumed abandoned without a judicial determination to that effect made after adequate notice. And, were we dealing with an out and out escheat act, their argument would be most persuasive—we would unhesitatingly say that there can be no escheat except pursuant to judicial determination made after legal notice.

But such is not the case, notwithstanding appellants' vehement insistence to the contrary and notwithstanding the fact that the title of the Act recites that it relates to property actually or presumptively subject to escheat. Certain parts of the Act, as indicated above, do relate to out and out escheat but before title can become vested in the state judicial determination is necessary and such determination must be made after adequate notice since the proceedings are required to be according to the Civil Code.

But the portions of the Act dealing with dormant bank deposits do not provide for a seizure of the deposits and vesting of title or ownership in the state but merely for a transfer of property which may later be adjudged to be subject to escheat, and these provisions are for the benefit and protection of both the depositors and the state. As said by the Supreme Court in *Provident Institution for Savings v. Malone*, 221 U. S. 660, 31 S. Ct. 661, 55 L. Ed. 899, 31 L. R. S. (N. S.) 1129, in discussing a somewhat similar statute, "the statute proceeds on the general principle that corporations may become involved, or may be dissolved; or that, after long lapses of time, changes may occur which would require someone to look after the rights of the depositor. The statute deals with accounts of an absent owner, who has so long failed to exercise any act or ownership as to raise the presumption that he has abandoned his property. And if abandoned, it should be preserved until he or his representative appear to claim it; or, failing that, until it should be escheated to the state. The right and power so to legislate is undoubted."

The good faith of the Legislature cannot be questioned and it is to be assumed that the Act was for the protection of the deposits as well as for the benefit of the state. That this is a justifiable assumption is clearly revealed in the provision giving the depositor (and this, of course, includes his legal representatives) the right, without limit of time, to make a claim and receive a return of the deposit provided there has not been a judicial determination of actual abandonment—and even after such judicial determination five years is given for the same purpose to any person who was not actually served with notice and did not appear in the proceedings.

In this respect both the rights of the depositor and the bank are fully protected by giving to the depositor a right of action against the state, which is conclusively presumed always to be able to pay, and by the provision relieving the bank of liability to the depositor upon compliance with the Act, fortified by the further provision for reimbursement to the bank by the state for any liability incurred by reason of compliance with the Act. The mere taking away of the depositor's right of action against the bank constitutes no

substantial deprivation of property when, in lieu thereof, he is afforded an action against the Commonwealth, the most perfect of all protection.

Nor does the requirement that the owner making claim must publish notice of his claim in a newspaper within fifteen days after filing it impose such a burden as to constitute a substantial deprivation. This is a reasonable requirement and is for the benefit of depositors whose deposits have been turned over to the state. Publicity is thus given to such claims in order that the true owners may be put on notice if a false claim is made.

It is our conclusion that the controversial portions of the Act are reasonable (as to the time provided as well as to the procedure) and that they would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the absence of the provision requiring notice to be posted at the courthouse door. Accordingly, it becomes unnecessary to discuss the sufficiency of such notice.

The conclusion we have reached is fully supported by *Comth. of Pennsylvania v. Dollar Savings Bank*, 259 Pa. 138, 102 Atl. 569, 1 A. L. R. 1048; *State v. Security Sav. Bank*, — Calif. App. —, 154 Pa. 1070; *Provident Institution for Savings v. Malone*, supra, and *Brookline Borough Gas Co. v. Bennett*, 227 N. Y. S. 203. The latter case upheld a similar act dealing with consumer deposits with utility companies (a class of property within the purview of the presumptive abandonment provision of the act in question), but the legal questions involved were identical with ones confronting us here.

It is the contention of appellants that even though the Act be held valid it can apply only to deposits made after its effective date since its application to deposits made prior thereto would result in impairment of the contract between the depositor and the bank in violation of section 19 of the Constitution of Kentucky which prohibits the enactment of any law impairing the obligation of contracts. It is not argued that such application of the Act would result in violation of the contract clause of the Federal Constitution since this question was laid to rest by the Supreme Court

in *Provident Institution for Savings v. Malone*, supra and *Security Sav. Bank v. Calif.*, 263 U. S. 282, 68 L. Ed. 306, wherein it was held that such statutes are not violative of the contract clause. These decisions are binding on us as to the federal question but not on the question of application of the Constitution of this state. *Glenn et al v. Field Packing Co.*, 290 U. S. 177.

In support of their contention appellants rely on *Bank of Louisville v. Board of Trustees of Public Schools*, 83 Ky. 219, 5 S. W. 735 and *Louisville School Board v. Bank of Kentucky*, 86 Ky. 150, 5 S. W. 739. In each of these cases the statutes in question attempted to vest in the school board title to bank deposits of persons who were absent from the state for eight years and who had not exercised any control over the deposits during that time. It was provided that the school board should be liable to the owner of the deposit, if he should later claim it, *but that no such liability should attach to the state*. In each case it was held that the deposit created a contract between the depositor and the bank by which the latter acquired the right to retain, use and control the money until it was returned to the depositor on his demand and that the statutes were void because they impaired the obligation of the contract from the standpoint of both the bank and the depositor.

A careful analysis of those opinions, reveals, however, that the underlying basis of the court's conclusion was the absence of perfect protection to the depositor and the bank. The opinion in the former case, on which the latter is based, is threaded through with comments on the failure of the statute to give the depositor, in lieu of his right of action against the bank, the substantial remedy of looking to the state for reimbursement and on its failure to give the bank any substantial remedy since it was left with no remedy except that of looking to the school board for reimbursement in the event it was compelled to account for the deposits. It is doubtful, to say the least, that the court would have reached the conclusion it did had the statute afforded to both a depositor and the bank the same perfect protection as that afforded by the Act here involved.

In any event, we think the correct conclusion was reached by the Supreme Court in the two cases referred to. It

seems so clear as to require little discussion that there is no substantial impairment of the contract from the depositor's standpoint since his deposit is returnable to him by the state at any time he files a claim therefor. The argument as to impairment of the contract from the bank's standpoint was effectively answered by the Supreme Court in *Security Saving Bank v. Calif.*, *supra*, in these words: "The contract of deposit does not give the banks a tontine right to retain the money in the event that it is not called for by the depositor. It gives the bank merely the right to use the depositor's money until called for by him or some other person duly authorized. If the deposit is turned over to the state, in obedience to a valid law, the obligation of the bank to the depositor is discharged."

It is our conclusion that the parts of the Act requiring a delivery of deposits declared to be presumed abandoned to the Department of Revenue are valid in their application to deposits made both prior and subsequent to the effective date of the Act.

There is little appeal in the insistence of appellants that if the strict letter of the decisions in *Bank of Louisville v. Board of Trustees of Public Schools and Louisville School Board v. Bank of Kentucky*, *supra*, is not followed our decision should be made prospective in accord with the policy adopted in *Payne v. City of Covington*, 276 Ky. 380, 123 S. W. (2d) 1045, of affording protection to those who have acted in reliance on opinions of this court and whose rights might be adversely affected by a change of decision, since, as indicated above, no substantial impairment of any right of either depositors or banks is effected by the Act.

The question of validity of the Act as applied to national banks must be approached in the light of the limitations applicable to state legislation affecting such institutions. National banks are amenable to state laws as are other institutions if such laws do not interfere with their functions in such manner as to conflict with the general objects and purposes of the National Banking Act. *First National Bank of Elizabethtown v. Com.*, 187 Ky. 151, 219 S. W. 175; *McClellan v. Chipman*, 164 U. S. 347, 41 L. Ed. 461; *First National Bank of San Jose v. Calif.*, 262 U. S. 366, 67 L. Ed. 1030. The burden placed on national banks of making the report of such deposits as the Act declares to be presumed

abandoned is not an unwarranted interference. *Waite v. Dowley*, 94 U. S. 527, 24 L. Ed. 181. But, as said in *First National Bank of San Jose v. Calif.*, *supra*, "any attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created. *Davis. Elmira Sav. Bank*, 161 U. S. 275, 40 L. Ed. 700, 16 Sup. Ct. Rep. 502".

Appellants insist that the case just quoted from is conclusive as to the invalidity of the Act in its application to national banks. In that case was involved the validity of California statutes as so applied. The statutes declared that deposits in bank to the credit of depositors who for more than twenty years had not made a deposit or withdrawn any part of the deposit and where neither the depositor nor any claimant had filed any notice with the bank showing his present resident, should *escheat* to the state. The court, in commenting on the opinion of the Supreme Court of California affirming a judgment directing the payment of such deposits to the state, pointed out that the California court had declined to express an opinion as to whether the judgment operated as a present escheat of the rights of the depositor or whether the depositor still had the right to prosecute an action to obtain payment of the deposit from the state. Therefore, in discussing the case, the Supreme Court treated the California statutes as statutes of escheat or confiscation and held them void as being a regulation of national banks to such an extent as to tend to frustrate the purposes and objects of national legislation with respect to such banks. This was the reason the California statutes were held to be invalid as to national banks and not, as suggested by appellees, the fact that the statutes impaired the obligation of the contract of deposit. Analysis of the opinion reveals, however, that the only undue interference of the statutes with national banks was embodied in one sentence of the opinion as follows: "The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation."

Thus it seems that the California statutes were held invalid as to national banks because they were deemed by the court to be *escheat* statutes confiscating the deposits solely by reason of *dormancy*. The comment of the court on the failure of the California court to express an opinion on the right of the depositor to secure a return of the deposit is significant. Thus, while this case unquestionably decided that the California statutes were invalid as to national banks, and while this decision was reaffirmed as to the particular California statutes in the later case of *Security Sav. Bank v. California*, *supra*, we do not feel that it is controlling as to the act in controversy since the Act differs from the California statutes in that no escheat is declared by reason of mere dormancy—The Act is one pursuant to which mere custody, as distinguished from title, is vested in the state by reason of dormancy and is not one of confiscation having the tendency to cause depositors to hesitate to make deposits in national banks. And, since the confiscatory feature, which the Supreme Court had in mind as being the feature of the California statutes which tended to bring about an undue interference with national banks, is absent from the present Act, it does not appear to us that the case is controlling of the question now presented.

It is true that the Supreme Court of Tennessee in *American National Bank of Nashville v. Clarke*, Supt. of Banks, 175 Tenn. 480, 135 S.W. (2d) 935 and the United States Circuit Court of Appeals for the Sixth Circuit in *Star, Atty. Gen. v. O'Conner, Comptroller, et al*, 118 F. (2d) 548, relying on the authority of the case under discussion, held somewhat similar statutes of Tennessee and Michigan invalid as to national banks but it seems to us that those cases fail to give full consideration to the fact that the Supreme Court pointed out that the undue interference of the California statutes with national banks was brought about by the confiscatory nature of the statutes in providing out and out escheat by reason of mere dormancy. It is significant, though, that the opinion in the Sixth Circuit case did touch lightly on this aspect of the *San Jose Bank* case as is revealed by the remark that "the Michigan statutes resemble

the California Act in being closer akin to illegitimate laws of forfeiture than to legitimate laws of escheat.

Since the act in controversy does not provide for an escheat of deposits by reason of mere dormancy, as did the California statutes, (title being vested in the state only after judicial determination of *actual* abandonment), and since the depositor may at any time before actual abandonment is adjudged (and five years thereafter if he was not served with actual notice) secure a return of his deposit from the state, it is our opinion that the Act has no tendency to cause depositors to hesitate on account of apprehended fear of confiscation to make deposits in national banks. This being true, there is no unwarranted interference with such banks and no frustration of the purposes of national legislation concerning them such as to render the Act invalid as to them.

The judgment is affirmed on the original appeal and reversed on the cross appeal with directions to enter a judgment in conformity with this opinion. An order having been entered in this court suspending the operation of the Act during the pendency of the appeal, the circuit court will, on return of the case to that court, fix a date for compliance with the Act, giving a reasonable time for that purpose.

Whole court sitting except Judge Rees.

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EXHIBIT "C".

**Acts of the General Assembly, 1940, Chap. 79 (H. B. 321),
P. 333.**

"An Act relating to all classes of property actually or presumptively subject to escheat; providing the terms

upon which presumption of abandonment of property and presumption of the death of persons shall be determined; providing how and when said property may be escheated to the Commonwealth of Kentucky, providing for the reduction of all such property to cash, transferring the possession of same to the Treasurer of Kentucky; providing how any person who is legally entitled thereto may recover same from the Treasurer; providing that any person transferring property to the Commonwealth as required by this Act shall be relieved of liability to the owner thereof or reimbursed for any liability or damage incurred by complying with this Act; defining certain words; providing for reports and examination of records; providing for the administration and enforcement of this Act, and for an Assistant Attorney General as incident thereto; providing fines, penalties, and imprisonment for failure to comply with this Act; providing that if any provision of this Act shall be held unconstitutional that it is the Legislative intent that all other provisions thereof shall remain in force and effect; repealing sections 1610 to 1623, inclusive of Carroll's Kentucky Statutes, Baldwin's 1936 Revision; repealing all Acts and parts of Acts in conflict with this Act; repealing Chapter 168, Acts of the Regular Session of the 1938 General Assembly of the Commonwealth of Kentucky; and repealing, amending and re-enacting sections 1606, 1607, 1608, and 1609 of Carroll's Kentucky Statutes, Baldwin's 1936 Revision.

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

"Sec. 1. That sections 1610 to 1623 inclusive of Carroll's Kentucky Statutes, 1936 edition, and Chapter 168, Acts of the Regular Session of the 1938 General Assembly be, and the same are hereby repealed.

"Sec. 2. (Ky. St. 1605a) Whenever used in this Act, unless the context requires otherwise, the word 'person' shall mean and include any individual, state and national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

"Whenever used in this Act, unless the context requires otherwise, the word 'claim' shall mean to demand payment

or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved.

"Sec. 3. That section 1606 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted so that when amended and re-enacted it shall read as follows:

(1606) "That part of estates or property having a situs in this Commonwealth, not disposed of by will of persons who have died, or may hereafter die without heirs or distributees entitled to the same; or which have been or may hereafter be devised to any person, or any heir or distributee or devisee of such person or of the testator, who has not claimed the same or shall not claim the same within eight (8) years after such death, shall vest in the Commonwealth, subject to all legal and equitable demands on same. All such property shall be liquidated and the proceeds thereof, less costs, fees, and expenses incidental to all legal proceedings of such liquidation shall be paid to the Department of Revenue. Any estates or property except a perfect title to a corporeal hereditament, which estates or property have been abandoned by the owner thereof, shall also vest in the Commonwealth, subject to all legal and equitable demands on same. All such property shall be liquidated and the proceeds thereof, less costs, fees, and expenses incidental to all legal proceedings of such liquidation shall be paid to the Department of Revenue.

"Sec. 4. That section 1607 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted so that when amended and re-enacted it shall read as follows:

(1607) "The personal representatives of persons, whose estates or a part of whose estates are not distributed by will, and who died without heirs or distributees entitled to same, shall settle their accounts within one (1) year after qualifying as such and pay over to the Department of Revenue the proceeds of all personal estate, first deducting the proper legal liabilities of the estate.

"(1) If the whole personal estate cannot be settled and the accounts closed within one (1) year, the settlement as far as practicable, shall then be made and the proceeds paid over to the Department of Revenue, and the residue shall

be so settled and paid over as soon thereafter as can be properly done.

“(2) The personal representative shall take possession of the real estate of such decedent not disposed of by his will, and rent out the same from year to year until it is otherwise legally disposed of, and pay the net proceeds to the Department of Revenue.

“(3) The personal representative shall also make out and transmit to the Department of Revenue a description of the quantity, quality, and estimated value of such real estate and its probable annual profits.

“Sec. 5. That section 1608 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted, so that when amended and re-enacted it shall read as follows:

(1608) “If any devisee or his heirs, advisee or distributee, or any heir or distributee of a testator has failed or shall hereafter fail for eight (8) years to claim his legacy the personal representative of such testator or other person having the same in possession shall, after deducting the legal liabilities thereon, pay and deliver over such legacy, whether the same be real or personal estate, and the net profits thereof to the Department of Revenue.

“Sec. 6. That section 1609 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted, so that when amended and re-enacted it shall be read as follows:

(1609) “When any person owning property or estates having a situs in this Commonwealth is not known to be living for seven (7) successive years, and neither said owner, his heirs, devisees, or distributees can be located or proved to have been living for seven (7) successive years, such person shall be presumed to have died without heirs, devisees, or distributees, and both his real and personal estate shall be liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings, and less the liabilities which have been properly claimed and approved against same, shall be paid to the Department of Revenue.

(1610) “Sec. 7. When the owner or owners (whether such ownerships be legal, beneficial, equitable, or otherwise)

of deposits payable on demand in any bank or trust company (either state or national) within this Commonwealth, have not or shall not within ten (10) successive years next preceding the date as of which reports are required to be made by section 8 of this Act, (a) negotiated in writing with the bank or trust company in respect thereto, or (b) been credited with interest on the pass book or certificate of deposit on his or their request, or (c) had a transfer, disposition of interest, or other transaction noted of record in the books or records of such bank or trust company, or (d) increased or decreased the amount of the deposit, such deposit and the interest thereon shall be presumed abandoned.

"When the owner or owners (whether such ownerships be legal, beneficial, equitable, or otherwise) of deposits other than those payable on demand in any bank or trust company (either state or national), within this Commonwealth, have not or shall not within twenty-five (25) successive years next preceding the date as of which reports are required to be made by section 8 of this Act, (a) negotiated in writing with bank or trust company in respect thereto, or (b) been credited with interest on the passbook or certificate of deposit on his or their request, or (c) had a transfer, disposition of interest, or other transaction noted of record in the books or records of such bank or trust company, or (d) increased or decreased the amount of the deposit during said period, such deposits and the interest thereon shall be presumed abandoned.

"All deposits of money, stocks, bonds, or other credits of any kind whatsoever made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten (10) years after the occurrence of such event, as would obligate the holder or depository to return the same or the equivalent thereof to the proper owner or claimant.

"All dividends, stocks, and bonds and the increments thereof, all monies and credits and the increments thereof, all claims for monies and credits and the increments thereof, and all intangible personal estate or property whatsoever

and the increment thereof, held within this Commonwealth by any person for the benefit of another person shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten (10) years from the time the holder, trustee, debtor, or other responsible person became obligated to return the same or the equivalent thereof to the proper owner or claimant. If the increments or benefits payable on any instrument are not claimed within the time and manner prescribed in this paragraph, the instruments or evidence of the debt or obligation shall likewise be presumed abandoned. /

"All estate or property paid into any court of this Commonwealth for distribution and the increments thereof shall be presumed abandoned if not claimed within five (5) years after the estate was so paid into court, or as soon after said (5) year period as all claims filed in connection therewith shall have been disallowed or settled by the court.

"None of the provisions of this Act shall apply to bonds of counties, cities, school districts, or other tax levying subdivisions of this Commonwealth.

(1611) "Sec. 8. It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or other capacity coming within the purview of section 7 of this Act, to report annually to the Department of Revenue as of July 1, all property held by them declared by this Act now to be presumed abandoned, and all property which shall hereafter become presumed abandoned under the provisions of this Act. The report shall be filed in the offices of the Department of Revenue in Frankfort on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last-known address, the amount and kind of property, and such other information as the Department of Revenue may require for the administration of this Act. Such persons or court as may have made report of any estate or property presumed abandoned, as required in this Act, shall, within four (4) months after July 1, turn over to the Department of Revenue all

property so reported; except, that if the person making such report, or any other person or persons are able to prove by competent evidence on hearing before the Commissioner of Revenue that the owner or person entitled to the property has subsequently within said four (4) months transacted business resulting in writing of record in the books of the person or court making the report, which shows the owner or person entitled to the estate or property has knowledge thereof and still claims his legal or equitable right thereto or has by other competent evidence clearly manifested such knowledge or claim, it shall not be the duty of the person or court making such report or in possession of such property to surrender it to the Department of Revenue.

(1612) "Sec. 9. Any intangible personal estate or property required by sections 7 and 8 of this Act to be liquidated so as to permit payment thereof to the Department of Revenue, shall be surrendered to the Department of Revenue and sold by the Department of Revenue at public sale at Frankfort, or in such other city in the Commonwealth as may in its judgment afford the most favorable market for the particular property involved, to the highest bidder; provided that it may decline the highest bid and reoffer the property for sale if it deems the price offered insufficient. Such sale shall be advertised at least one week before the date of the sale in a newspaper of general bona fide circulation in the county where said property was found or abandoned, and in the county where the sale is to be made, and the sale shall be held at the courthouse door.

(1613) "Sec. 10. Any person who shall transfer to the Department of Revenue, property to which the Commonwealth is entitled under the provisions of this Act, is hereby relieved of any liability to the owner of such property arising from such transfer; however, if any such person cannot be relieved of such liability by the provisions of this section, the Commonwealth shall reimburse such person for all liability to the owner of the property or estate or damage incurred by reason of compliance with the provisions of the Act.

(1614) "Sec. 11. Any person claiming an interest in estates or property paid or surrendered to the Commonwealth in accordance with the provisions of sections 3, 4, 5, or 6 of this Act, who was not actually served with notice and who did not appear, and whose claim was not considered during the action or at the proceedings which resulted in the payment of same to the Commonwealth, may within five (5) years after the judgment file his claim thereto with the Department of Revenue.

"Any person claiming an interest in estates or property paid or surrendered to the Commonwealth in accordance with sections 7, 8, or 9 of this Act, which was not subsequently adjudged under the procedure set out in section 16 of this Act to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee, or other person entitled under the laws of this Commonwealth relating to wills, descent and distribution, to take the legal or equitable title to such estate or property, may file his claim thereto at any time after same was paid to this Commonwealth.

"The claimant shall within fifteen (15) days after filing any claim permitted under this section publish notice of such claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the Commonwealth as herein provided. If there be no such newspaper, the claimant shall post such notice at the courthouse door and in three other conspicuous places in said county, and shall file proof of such publication or posted notice with the Department of Revenue. No such claim shall be allowed until fifteen (15) days after proof of such notice is received by the Department of Revenue at its office in Frankfort.

(1615) "Sec. 12. It shall be the duty of the Commissioner of Revenue to consider any claim and/or defense permitted to be filed before it and to hear evidence in respect thereto. If the claimant establishes his claim, the Commissioner of Revenue shall, when the time for appeal or further legal procedure herein provided has expired, authorize payment to him of a sum equal to the same amount which was paid

into the Treasury in compliance with this Act. The decision shall be in writing and shall state the substance of the evidence heard by the Commissioner of Revenue if a transcript thereof be not kept and such decision shall be a matter of public record.

"Any person, petitioner, or claimant dissatisfied with the decision of the Commissioner of Revenue may within sixty (60) days, appeal from such decision to the Franklin Circuit Court or file an action in said court to vacate such decision. In either event the proceedings shall be de novo, and no transcript of the record before the Commissioner of Revenue shall be required to be kept unless requested by the claimant. In any such proceeding before the Franklin Circuit Court, the Commissioner of Revenue shall be made a party defendant, and all other persons required by law to be made parties defendant or plaintiff and served with actual or constructive notice in rem or quasi in rem actions shall be so treated. Any party adversely affected by the decision of the Franklin Circuit Court may appeal to the Kentucky Court of Appeals in the manner now generally provided by law, but such appeal must be commenced within sixty (60) days after the judgment. However, the Commonwealth shall in no event be required to make a supersedeas bond. The provisions of this section which relate to the decision of the Commissioner of Revenue and appeals therefrom shall also apply to a decision of the Commissioner rendered under authority of section 8 of this Act requiring payment to the Department of Revenue over the protest of the holder or claimant of the property.

(1616) "Sec. 13. Whenever any estate or property, which may be escheated under the provisions of this Act by reason of actual abandonment, or death and for presumption of death of the owner without an heir, distributee, devisee or other person entitled to take the legal or equitable title to such estate or property under the laws of this Commonwealth relating to wills, or descent and distribution, has or shall hereafter be deposited with, or in the custody of, or under the control of any court of the United States in and for any district within this Commonwealth, or in the custody of any depository, clerk or other officer of such court,

or shall have been surrendered by such court or its officers to the United States Treasury, the circuit court of this Commonwealth in any county in which such court of the United States sits, shall have jurisdiction to ascertain whether an escheat has occurred, and to enter a judgment of escheat in favor of the Commonwealth. Provided, however, this section shall not be construed as authorizing a judgment to require such courts, officers, agents, or depositories to pay or surrender such funds to the Commonwealth on a presumption of abandonment as provided in sections 7 and 8 of this Act.

(1617) *Sec. 14. To aid in the enforcement and administration of the provisions of this Act, the Attorney General shall, with the approval of the Governor, appoint an additional Assistant Attorney General, having at least the qualifications of the Sixth Assistant Attorney General, and assign him to the Department of Revenue. It shall be the special duty of such Assistant Attorney General to represent the Commonwealth at the hearings required by this Act to be held before the Commissioner of Revenue to consider claims filed pursuant to section 11 of this Act; to advise the Department of Revenue, county attorneys, and all other inquiries, with respect to questions arising under the provisions of this Act; to aid in the prosecution of all other actions or proceedings authorized by this Act when so directed by the Commissioner of Revenue or the Attorney General; and to perform such other duties as are imposed on him by any provision of this Act. Provided, however, his opinions shall be subject to the approval of the Attorney General in the same manner as is such work of other Assistant Attorney General now established by law, and he shall also have the other ordinary powers and duties of an Assistant Attorney General.

“He shall receive a salary not exceeding four thousand dollars (\$4,000) a year, to be fixed by the Attorney General and the Commissioner of Revenue as provided by law, which shall be paid on authorization of the Commissioner of Revenue in the same manner as employees of the Department of Revenue are generally paid.

(1618) "Sec. 15. All legal proceedings to enforce sections 3, 4, 5, and 6 of this Act shall be instituted on the relation of the Commissioner of Revenue.

"It shall be the duty of the county attorney of a county in which any estate or property is located, coming within the purview of sections 3, 4, 5, or 6 of this Act, to institute such legal proceedings as are necessary to enforce the provisions of said sections and to recover such sums as are due the Commonwealth thereunder. The petition and all pleadings necessary to be filed in such proceedings shall be on the relation of the Commissioner of Revenue and shall be sent to the Commissioner of Revenue for his signature and approval. The petition shall be accompanied by an affidavit of the county attorney, stating the facts on which it is based. For all other pleadings, there shall be a statement by the county attorney of the reason for the particular pleading.

"On any action or proceeding filed by a county attorney under the provisions of this Act, it shall be the duty of the Assistant Attorney General, provided for in section 14 of this Act, to offer assistance and suggestions to the county attorney in the preparation of the petition or any pleadings, and to revise and correct same as he may deem necessary, subject to the ultimate approval of the Commissioner of Revenue, when he is required to sign same.

"If the estate or property of a person coming within the purview of sections 3, 4, 5, or 6 of this Act is located in two or more counties, all such property may be included in one action or proceeding; provided, however, that the county attorneys of all counties in which such property is located may join in the prosecution of the action or proceeding, and their fees shall be determined by the amount of money derived from the property located within their respective counties when possible to determine such figure; otherwise, the courts shall determine their fees by equitable apportionment in accordance with the value of the property which is located in their respective counties.

"If the county attorney performs all the duties imposed upon him by this Act relating to enforcement of the provisions of sections 3, 4, 5, or 6, he shall be entitled to a

fee of fifteen per cent (15%) of any sum recovered in such proceeding except that the county attorney's fee shall be limited to five per cent (5%) on intangible property recovered in excess of one thousand dollars (\$1,000).

"In the event that a county attorney declines to perform the duties imposed upon him by this Act, they may be performed by the Commissioner of Revenue and the county attorney shall not be entitled to any fee. The Commissioner may, when he deems it to the best interest of the Commonwealth, institute any action authorized by this Act to be brought by the county attorney, or join the county attorney in the active prosecution of any such action. The county attorney shall be entitled to his fee in either instance if he does his duty.

"Pending the outcome of an action or court proceeding, the court may make such disposition of the land or tangible personal property involved as may seem best from the standpoints of use, rents, interest, and profits. In the event the use of the property is given to the claimant by the court, such claimant shall be held accountable for returns and profits arising from such use, if the Commonwealth be successful in such proceeding.

(1619) "Sec. 16. In the event any person refuses to pay or surrender voluntarily intangible estate or property to the Department of Revenue, as provided in sections 7 or 8 of this Act, or if the agent of any court refuses so to do, a proceeding may be brought on the relation of the Commissioner of Revenue as an equity action in a court of competent jurisdiction to force such payment or surrender of property, and all property subject to said sections 7 and 8 may be listed and included in a single action.

"If intangible estates or property are turned over to the Department of Revenue on presumption of abandonment, in accordance with sections 7, 8, or 9 of this Act, the Commissioner of Revenue may at any subsequent time institute proceedings in a court of competent jurisdiction to establish conclusively that such estate or property was actually abandoned, or that the owner thereof is dead and there are no heirs, devisees, distributees, or any other persons entitled to succeed to the title of same.

"In the event a particular person or persons may have property coming within the purview of sections 3, 4, 5, or 6 of this Act, and also sections 7 or 8 of this Act, the actions herein required to be brought by the county attorney and the Commissioner of Revenue may be joined, but joinder is not required, and if separate actions shall be brought, they shall not be considered as coming within the rule against splitting a cause of action. The county attorney shall not be charged with the duty of enforcing sections 7, 8, 9 and 12 of this Act.

"The procedure of any and all actions or proceedings permitted or necessary under this Act to be filed in a court of competent jurisdiction shall be the same as that now provided in Carroll's Kentucky Civil Code of Practice, unless provided differently herein, except that all such actions or proceedings shall be filed as equity actions.

(1620) "Sec. 17. All money received by the Department of Revenue under the provisions of this Act shall be deposited with the State Treasury and credited to the account of the General Expenditure Fund; provided, however, that ten per cent (10%) of such sum so received during the fiscal year beginning July 1, 1940, and ten per cent (10%) of such sum so received during the fiscal year beginning July 1, 1941, shall be added to and made a part of the appropriation available to the Department of Revenue for the respective fiscal years. After June 30, 1942, the legislature shall make provision for the administration of this Act in the regular budgetary appropriation made for the Department. All the expense necessary and required to be paid by the Commonwealth in administering and enforcing this Act shall be paid, out of the funds available to the Department of Revenue, and such expenses shall be paid in the same manner as other claims upon the Commonwealth are paid.

"The county attorney shall act as agent of the Department of Revenue for the collection of all judgments recovered in actions prosecuted by him under the provisions of this Act and he shall deduct the fee allowed him for his services performed pursuant to this Act, and promptly remit such collections to the Department of Revenue, with

such information relating thereto as the Department may require.

(1621) "Sec. 18. Any action permitted by this Act to be brought by the Commonwealth must be brought within fifteen (15) years from the effective date of this Act or from the time when the cause of action accrued, whichever is the later date.

(1622) "Sec. 19. Any person under disability affected by this Act shall have five (5) years after the disability is removed in which to take any action or procedure or make any defense allowed to one *sui juris*.

(1622-1) "Sec. 20. The Department of Revenue, through its employees, is also authorized to examine all records of state and national banks or trust companies, corporations, companies, partnerships, agencies, and persons where there is reason to believe that there has been or is a failure to report property which should be reported under the provisions of this Act.

"The Commissioner of Revenue shall have authority to promulgate such reasonable rules and regulations as are necessary for the enforcement of this Act, and to govern hearings provided in this Act to be held before him. Provided, however, he may delegate in writing to any regular employee of the Department of Revenue authority to perform any of the duties imposed on him by this Act excepting the promulgation of rules and regulations.

"Any person, or representative thereof refusing to make any report as required by this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$50) or more than two hundred dollars (\$200), or imprisoned not less than thirty (30) days or more than six (6) months, or both so fined and imprisoned. The Department of Revenue shall also have authority, as herein provided, to require such reports, or the surrender of such property, by civil action, including an action in the nature of a bill of discovery, in which case such person shall be required to pay a penalty equal to ten per cent. (10%) of all amounts which he may ultimately be required to surren-

der, but in no event shall said penalty exceed five hundred dollars (\$500).

"Any person bona fide contesting the applicability of this Act to him may be relieved of the threat of any fine or penalty by posting a compliance bond in an amount and of surety sufficient to the court.

"Sec. 21. All Acts and parts of Acts in conflict with this Act are, to the extent of such conflict, hereby repealed.

"Sec. 22. It is the intent and purpose of the General Assembly of this Commonwealth of Kentucky to enact each and every provision of this Act separately, so that in the event the courts for any reason should hold any provision thereof void, or the application of any provision thereof void, then all other provisions or the application of any or all other provisions shall be deemed to remain in full force and effect; and it is hereby expressly declared that the General Assembly would have enacted any part or provision of this Act, irrespective of any other part or provision thereof.

"Approved March 1, 1940 by Governor Johnson."

EXHIBIT "D".

SEC. 8, 1942 AMENDMENT.

"It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of section 7 of this Act, to report annually to the Department as of July 1, all property held by them declared by this Act to be presumed abandoned. The report shall be filed in the offices of the Department on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the Department may require for the administration of this Act.

"The report shall be made in duplicate; the original shall be retained by the Department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post said copy on the court house door or the court house bulletin board. The sheriff shall immediately certify in writing to the Department the date when said copy was posted. Said copy must be posted on or before October 1 of the year when it is made, and shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law.

"Any person who has made a report of any estate or property presumed abandoned, as required by this Act, shall, between November 1 and November 15 of each year, turn over to the Department all property so reported; but if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the Department except on order of court. No person shall be required to surrender any property on a presumption of abandonment to the Department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in court claiming any property which has been reported under the provisions of this Act, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the Department, but shall have the duty of notifying the Department of the pendency of such action.

"The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this Act and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within

the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs."

EXHIBIT "E".

Kentucky Revised Statutes.

CHAPTER 393

ESCHEATS

393.010 (1605a; 1610) CONSTRUCTION OF CHAPTER.

(1) As used in this chapter, unless the context requires otherwise:

(a) "Claim" means to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved;

(b) "Commissioner" means the Commissioner of Revenue;

(c) "Department" means the Department of Revenue; and

(d) "Person" means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee or liquidating agent.

(2) This chapter does not apply to bonds of counties, cities, school districts or other tax-levying subdivisions of this state.

393.020 (1606) PROPERTY SUBJECT TO ESCHEAT.

If any property having a situs in this state has been devised or bequeathed to any person and is not claimed by that person or by his heirs, distributees or devisees within eight years after the death of the testator, or if the owner of any property having a situs in this state dies without heirs or distributees entitled to it and without disposing of it by

will, it shall vest in the state, subject to all legal and equitable demands. Also, any property abandoned by the owner, except a perfect title to a corporeal hereditament, shall vest in the state, subject to all legal and equitable demands. Any property that vests in the state under this section shall be liquidated, and the proceeds, less costs, fees and expenses incidental to all legal proceedings of the liquidation shall be paid to the department.

393.030 (1607) DISPOSITION OF PROPERTY SUBJECT TO ESCHEAT.

(1) The personal representatives of a person, any part of whose property is not distributed by will, and who died without heirs or distributees entitled to it shall settle their accounts within one year after qualifying, and pay to the department the proceeds of all personal property, first deducting the proper legal liabilities of the estate.

(2) If the whole personal property cannot be settled and the accounts closed within one year, the settlement as far as practicable, shall then be made and the proceeds paid to the department, and the residue shall be settled and paid as soon thereafter as can be properly done.

(3) The personal representative shall take possession of the real property of the decedent not disposed of by his will, and rent it out from year to year until it is otherwise legally disposed of, and pay the net proceeds to the department.

(4) The personal representative shall also make out and transmit to the department a description of the quantity, quality, and estimate value of the real property and its probable annual profits.

393.040 (1608) PROCEDURE IF LEGACY OR DEVISE IS NOT CLAIMED.

If any devisee or legatee, or his heir, devisee or distributee, has failed for eight years to claim his legacy or devise, the personal representative of the testator, or other person possessing it shall, after deducting the legal liabilities thereon, pay and deliver it, and the net profits from it to the department.

393.050 (1609) PRESUMPTION OF DEATH AFTER SEVEN YEARS; DISPOSITION OF PROPERTY.

When a person owning any property having a situs in this state is not known to be living for seven successive years, and neither he nor his heirs, devisees or distributees can be located or proved to have been living for seven successive years, he shall be presumed to have died without heirs, devisees or distributees, and his property shall be liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings, and the liabilities which have been properly claimed and approved against it, shall be paid to the department.

393.060 (1610) DEPOSITS IN BANK OR TRUST COMPANY PAYABLE ON DEMAND; WHEN PRESUMED ABANDONED.

Any deposit, (legal, beneficial, equitable or otherwise) payable on demand in any bank or trust company in this state, together with the interest thereon shall be presumed abandoned unless the owner has, within ten successive years next preceding the date as of which reports are required by KRS 393.110:

(1) Negotiated in writing with the bank or trust company concerning it;

(2) Been credited with interest on the passbook or certificate of deposit on his request;

(3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or

(4) Increased or decreased the amount of the deposit.

393.070 (1610) DEPOSITS NOT PAYABLE ON DEMAND; WHEN PRESUMED ABANDONED.

Any deposit (legal, beneficial, equitable or otherwise) other than those payable on demand in any bank or trust company in this state, together with the interest thereon, shall be presumed abandoned unless the owner has, within twenty-five successive years next preceding the date as of which reports are required by KRS 393.110:

(1) Negotiated in writing with the bank or trust company concerning it;

(2) Been credited with interest on the passbook or certificate of deposit on his request;

(3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or

(4). Increased or decreased the amount of the deposit.

393.080 (1610) DEPOSITS FOR SECURITY; WHEN PRESUMED ABANDONED.

Any deposit of money, stocks, bonds or other credits made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm, and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent.

393.090 (1610). INTANGIBLE PERSONAL PROPERTY HELD FOR ANOTHER; BENEFITS ON ANY INSTRUMENT; WHEN PRESUMED ABANDONED.

All dividends, stocks, bonds, money, credits and claims for money and credits; and all intangible personal property, and the increments of any of them, held in this state by any person for the benefit of another shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten years from the time the holder, trustee, debtor, or other responsible person became obligated to return them or their equivalent to the proper owner or claimant. If the increments or benefits payable on any instrument are not claimed within the time prescribed in this section, the instrument or evidence of the debt or obligation shall likewise be presumed abandoned.

393.100 (1610) PROPERTY PAID INTO COURT; WHEN PRESUMED ABANDONED.

Any property paid into any court of this state for distribution, and the increments thereof, shall be presumed

abandoned if not claimed within five years after the date of payment into court, or as soon after the five-year period as all claims filed in connection with it have been disallowed or settled by the court.

393.110 (1611) HOLDERS OF ABANDONED PROPERTY TO REPORT TO DEPARTMENT; POSTING OF NOTICES; DUTY TO SURRENDER PROPERTY TO DEPARTMENT; RIGHTS OF ACTION.

(1) It shall be the duty of all state and National banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of KRS 393.060 to 393.100, to report annually to the department as of July 1, all property held by them declared by this chapter to be presumed abandoned. The report shall be filed in the offices of the department on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the department may require for the administration of this chapter. The report shall be made in duplicate; the original shall be retained by the department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post said copy on the courthouse door or the courthouse bulletin board. The sheriff shall immediately certify in writing to the department the date when said copy was posted. Said copy must be posted on or before October 1 of the year when it is made, and shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law.

(2) Any person who has made a report of any estate or property presumed abandoned, as required by this chapter, shall, between November 1 and November 15 of each year, turn over to the department all property so reported; but if the person making the report or the owner of the property shall certify to the department by sworn statement

that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the department except on order of court. No person shall be required to surrender any property on a presumption of abandonment to the department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in court claiming any property which has been reported under the provisions of this chapter, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the department, but shall have the duty of notifying the department of the pendency of such action.

(3) The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this chapter and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs. (1942, c. 156, § § 1, 2)

393.120 (1612) SALE OF ABANDONED PROPERTY

Any intangible personal property required by KRS 393.060 to 393.110 to be liquidated so as to permit payment to the department, shall be surrendered to the department and sold by it to the highest bidder at public sale at Frankfort, or in whatever city in the state affords, in its judgment, the most favorable market for the particular property involved. The department may decline the highest bid and reoffer the property for sale if it considers the price offered insufficient. The sale shall be advertised at least one week

in advance in a newspaper of general bona fide circulation in the county where the property was found or abandoned, and in the county where the sale is to be made. The sale shall be held at the courthouse door.

393.130 (1613) TRANSFEROR TO DEPARTMENT RELIEVED OF LIABILITY.

Any person who transfers to the department property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter.

393.140 (1614) CLAIM OF INTEREST IN PROPERTY SURRENDERED TO STATE.

(1) Any person claiming an interest in any property paid or surrendered to the state in accordance with KRS 393.020 to 393.050 who was not actually served with notice, and who did not appear, and whose claim was not considered during the action or at the proceedings that resulted in its payment to the state, may, within five years after the judgment, file his claim to it with the department.

(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee or other person entitled under the laws of this state relating to wills, descent and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

(3) The claimant shall, within fifteen days after filing any claim permitted under this section, publish notice of the claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the state. If there is no such newspaper, the claimant shall post the notice at the courthouse door and

in three other conspicuous places in that county, and shall file proof of publication or posted notice with the department. No such claim shall be allowed until fifteen days after proof of the notice is received by the department at its offices in Frankfort.

"Bona fide circulation" defined, KRS 424.010

393.150 (1615) COMMISSIONER TO DETERMINE CLAIMS.

The commissioner shall consider any claim or defense permitted to be filed before the department and hear evidence concerning it. If the claimant establishes his claim, the commissioner shall, when the time for appeal or further legal procedure has expired, authorize payment to him of a sum equal to the amount paid into the State Treasury in compliance with this chapter. The decision shall be in writing and shall state the substance of the evidence heard by the commissioner, if a transcript is not kept. The decision shall be a matter of public record.

393.160 (1615) APPEALS FROM DECISION OF COMMISSIONER.

Any person dissatisfied with the decision of the commissioner may, within sixty days, appeal from it to the Franklin Circuit Court or file an action in that court to vacate the decision. In either event the proceedings shall be de novo, and no transcript of the record before the commissioner shall be required to be kept unless requested by the claimant. In such proceeding the commissioner shall be made a party defendant, and all other persons required by law to be made parties in actions in rem or quasi in rem shall be made parties. Any party adversely affected by the decision of the Franklin circuit court may appeal to the Court of Appeals within sixty days after the judgment. Upon an appeal the state shall not be required to make a supersedeas bond. The provisions of this section relating to the decision of the commissioner and appeals therefrom shall also apply to a decision of the commissioner rendered under authority of KRS 393.110.

**393.170 (1616) PROPERTY IN FEDERAL CUSTODY;
DETERMINATION OF WHETHER ESCHEAT HAS
OCCURRED.**

Whenever any property escheated under this chapter by reason of actual abandonment, or death or presumption of death of the owner without leaving any person entitled to take the legal or equitable title under the laws of this state relating to wills, or descent and distribution, has been deposited with, or in the custody or under the control of, any Federal court in and for any district in this state, or in the custody of any depository, clerk or other officer of such court, or has been surrendered by such court or its officers to the United States Treasury, the circuit court of any county in which such Federal court sits shall have jurisdiction to ascertain whether an escheat has occurred, and to enter a judgment of escheat in favor of the state. This section does not authorize a judgment to require such courts, officers, agents or depositories to pay or surrender funds to this state on a presumption of abandonment as provided in KRS 393.060 to 393.110.

**393.180 (1618) PROCEEDINGS INSTITUTED BY
COUNTY ATTORNEY ON RELATION OF COMMIS-
SIONER.**

Any legal proceeding to enforce KRS 393.020 to 393.050 and to recover any sum due the state thereunder shall be instituted, on the relation of the commissioner, by the county attorney of the county in which any such property is located. The petition and all necessary pleadings shall be sent to the commissioner for his signature and approval. The petition shall be accompanied by an affidavit of the county attorney, stating the facts on which it is based. For all other pleadings, there shall be a statement by the county attorney of the reason for the particular pleading.

**393.190 (1618) ASSISTANT ATTORNEY-GENERAL
TO AID COUNTY ATTORNEY.**

On any action filed by a county attorney under the provisions of this chapter, the assistant Attorney-General pro-

vided for in KRS 15.140 shall offer assistance and suggestions to the county attorney in the preparation of the petition or any pleadings, and revise and correct them as he considers necessary, subject to the ultimate approval of the commissioner, when he is required to sign them.

393.200 (1618) COMPENSATION OF COUNTY ATTORNEY; COMMISSIONER MAY PERFORM HIS DUTIES.

If the county attorney performs all the duties imposed upon him by this chapter relating to enforcement of KRS 393.020 to 393.050 he shall be entitled to a fee of fifteen percent of any sum recovered in the proceeding, but shall be limited to five percent on intangible property recovered in excess of one thousand dollars. If the county attorney declines to perform the duties imposed upon him by this chapter, they may be performed by the commissioner, and the county attorney shall not be entitled to any fee. When he considers it to the best interest of the state, the commissioner may institute any action authorized by this chapter to be brought by the county attorney, or join the county attorney in the active prosecution of any such action. The county attorney shall be entitled to his fee in either instance if he does his duty.

Assistant Attorney-General assigned to Department of Revenue, KRS 15.140.

393.210 (1618) PROPERTY IN TWO OR MORE COUNTIES; COMPENSATION OF COUNTY ATTORNEYS.

If the property of a person coming within the purview of KRS 393.020 to 393.050 is located in two or more counties, all the property may be included in one action. The county attorneys of all counties in which such property is located may join in the prosecution of the proceeding. Their fees shall be determined by the amount of money derived from the property located within their respective counties when possible to determine that figure. Otherwise, the courts shall determine their fees by equitable apportionment in accordance with the value of the property located in their respective counties.

393.220 (1618) DISPOSITION OF TANGIBLE PROPERTY DURING PROCEEDING.

Pending the outcome of an action, the court may make such disposition of the land or tangible personal property involved as it considers best from the standpoints of use, rents, interest and profits. If the use of the property is given to the claimant by the court, he shall be held accountable for returns and profits arising from it if the state is successful in the proceeding.

393.230 (1619) PROCEEDING TO FORCE PAYMENT OF INTANGIBLE PROPERTY: TO ESTABLISH ACTUAL ABANDONMENT.

(1) If any person or the agent of any court refuses to pay or surrender intangible property to the department as provided in KRS 393.060 to 393.110, an equitable proceeding may be brought on the relation of the commissioner to force payment or surrender. All property subject to KRS 393.060 to 393.110 may be listed and included in a single action.

(2) If any intangible property is turned over to the department on presumption of abandonment, in accordance with KRS 393.060 to 393.120, the commissioner may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned, or that the owner has died and there is no person entitled to it.

393.240 (1619) ACTIONS MAY BE JOINED: SHALL BE IN EQUITY.

(1) If any person has property coming within the purview of KRS 393.020 to 393.050, and also of KRS 393.060 to 393.110, the actions required to be brought by the county attorney and the commissioner may be joined, but joinder is not required, and if separate actions are brought, they shall not be considered as coming within the rule against splitting a cause of action. The county attorney is not charged with the duty of enforcing sections KRS 393.060 to 393.120, 393.150 or 393.160.

(2) The procedure for all actions under this chapter shall be filed as equity actions and follow the procedure provided by the Civil Code of Practice, unless otherwise provided in this chapter.

393.250 (1620) EXPENSES, HOW PAID; COUNTY ATTORNEY TO COLLECT JUDGMENTS, DEDUCT FEE.

(1) Any necessary expense required to be paid by the state in administering and enforcing this chapter shall be paid out of appropriations made to the department.

(2) The county attorney shall act as agent of the department for the collection of all judgments recovered in actions prosecuted by him under this chapter. He shall deduct the fee allowed him and promptly remit the remainder to the department with such information relating thereto as the department requires.

393.260 (1621) LIMITATION OF STATE'S ACTION.

Any action brought by the state under this chapter shall be brought within fifteen years from June 12, 1940 or from the time when the cause of action accrued, whichever is the later date.

393.270 (1622) PERSON UNDER DISABILITY; EXTENSION.

Any person under disability affected by this chapter shall have five years after the disability is removed in which to take any action or procedure or make any defense allowed to one *sui juris*.

393.280 (1622-1) EXAMINATION OF RECORDS; PROMULGATION OF RULES; DELEGATION OF COMMISSIONER'S AUTHORITY.

(1) The department, through its employees, may examine all records of any person where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter.

(2) The commissioner may promulgate any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writ-

ing to any regular employe of the department authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

393.290 (1622-1) CIVIL ACTION TO ENFORCE PRODUCTION OF REPORTS, SURRENDER OF PROPERTY.

(1) The department may require the production of reports, or the surrender of property as provided in this chapter by civil action, including an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent of all amounts that he is ultimately required to surrender. This penalty shall not exceed five hundred dollars.

(2) Any person who in good faith contests the applicability of this chapter to him may be relieved of the threat of any penalty by posting a compliance bond in an amount and of surety sufficient to the court.

393.300 (1623-1) RESTRICTION ON ESCHEAT OF REAL PROPERTY HELD BY LENDING CORPORATION UNDER SUPERVISION.

No person shall institute proceedings to escheat real property the title to which was acquired by any lending corporation in satisfaction of debts previously contracted in the course of its business, or that it purchases under a judgment for any such debt in its favor, if such lending corporation is under the supervision of the Division of Banking of this state, Comptroller of Currency of the United States or any other duly constituted supervising banking authority, state or Federal, without first obtaining the consent of the supervising authority having supervision over that corporation.

393.990 (1622-1) PENALTIES.

Any person who refuses to make any report as required by this chapter shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned for not less than thirty days nor more than six months, or both.